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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,277	07/19/2006	Fabio Vignoli	US040043US2	8768
24737 7590 10/06/2009 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
ZHAO, YU				
ART UNIT		PAPER NUMBER		
2169				
MAIL DATE		DELIVERY MODE		
10/06/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/597,277

**Applicant(s)**

VIGNOLI ET AL.

**Examiner**

YU ZHAO

**Art Unit**

2169

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **June 23, 2009** has been entered.

***Response to Amendment***

2. Acknowledgment is made of applicant's amendment filed on **June 23, 2009**.

**Claims 1-21 are presented for examination.**

**Claims 1, 4, 6, 10, 11, 14, 17 are amended.**

**Specification Objections are withdrawal** in light of amendment by the applicant.

**Claim Objections are withdrawal** in light of amendment by the applicant.

**35 USC 101 Rejections on claims 17-21 is withdrawn** in light of amendment by the applicant.

**35 USC 112 Rejections on claims 17-21 is withdrawn** in light of amendment by the applicant.

***Remarks***

Based on the applicants' arguments filed on June 23, 2009, examiner interprets the term "apparatus" as hardware from hereon.

### ***Response to Argument***

3. Applicant's arguments filed in the amendment filed on **January 21, 2009**, have been fully considered but they are not deemed persuasive:

**Applicants argue that**, "Claims 1, 6, 11 and 17 stand objected to because of informalities. In this objection, Applicant believes that the Examiner is referring to claim 10 rather than claim 11. The objection is traversed for at least the following reasons. By this amendment, claims 1, 6, 10 and 17 have been amended to change the phrase "is adapted for" to "is adapted to be used by a rendering device" in the respective claims. The objection to the claims is now believed overcome. Withdrawal of the objection is requested."

The Examiner respectfully disagrees. The term "adapted" has been held that it "is adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. The examiner suggests the applicants remove the word "adapted to."

Appropriate correction is required.

**Applicants argue that**, "Claims 1-5, 11-13, 17 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hoch (U.S. Pub. No. US 2003/0191753 A1), hereinafter Hoch, in view of Barton et al. (U.S. Pub. No. US 2002/0072982 A1),

hereinafter Barton. With respect to claim 1, as presented herein, Applicant respectfully traverses this rejection on the grounds that these references are defective in establishing a prima facie case of obviousness."

The Examiner respectfully disagrees. Hoch discloses doing the searches (e.g. **multilevel hierarchical searching**, from general to detail, where Fig. 3A is equivalent to "highest hierarchical level", and Fig. 3B-3C is equivalent to "lower hierarchical level") in one system, while the instant invention uses two devices to perform searching on two different hierarchical levels. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hoch's system (which performs multilevel hierarchical searching on one device) to have each device do one single process (i.e. one hierarchical search). For example, "Device A performs process 1, then process 2" is equivalent to "Device B performs process 1, then Device C performs process 2."

**Applicants argue that**, "...In further contrast, Barton teaches a method for interacting with a user that employs a captured sample of an experimental environment in which the user exists as a command to trigger subsequent events (see Barton at paragraph [0006]). In paragraph [0013], Barton discloses that "a personal digital assistant or computer could be specially enabled to act as the interactive service itself by storing the database in its memory and performing the database query and processing without externally accessing the service." Barton further discloses in paragraph [0013] that "transmission to the service provider would only be needed for additional interaction and

potentially for updates of the music database, such as periodically (e.g., weekly)." In other words, the database (corresponding to the service) that would be stored on the personal digital assistant or computer is configured to operate without externally accessing the service (i.e., accessing the external database), except for additional interaction or updates to the database stored on the PDA or computer. Accordingly, Barton does not teach or suggest the limitations as specifically recited in claim 1 of the present application."

The Examiner respectfully disagrees. In paragraph [0013], Barton discloses "transmission to the service provider would only be needed for additional interaction and potentially for updates of the music database, such as periodically (e.g., weekly)." The term "only be needed" and "potentially for updates" indicate that Barton's system can be updated weekly if the user wants to.

Further, The claim language merely discloses "...to access and search at least on database sources...the first selector device is configured to access and search available data sources...weekly basis..." It does not clearly disclose the database is connected ALL the time or connected only when it is needed. With the broadest interpretation, the "database sources" can be connected any time when it needs to (disclosed in Barton's system). To distinguish the difference between the instant invention and references, the applicants should clarify it and amend it into the claim language.

**Applicants argue that,** "Thus, it is clear that neither reference provides any incentive or motivation supporting the desirability of the combination. Therefore, there is simply no basis in the art for combining the references to support a 35 U.S.C. § 103 rejection..."

The Examiner respectfully disagrees and directs the Applicants' attention to the effective dates of the cited references, concluding that in fact, it would have been obvious to a person having ordinary skill in the art *at the time the inventions were made* to have done such modifications for the motivating reasons provided in the Office Action.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-5, 11-13, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoch (U.S. Pub. No.: US 2003/0191753 A1), in view of Barton et al. (U.S. Pub. No.: U.S. 2002/0072982 A1, hereinafter, Barton).**

**For claim 1, Hoch discloses a playlist generator apparatus comprising:**  
**a first selector device that is configured access and to search at least one database source of material and to provide therefrom a first subset of identifications of items within the at least one database source of material at a**

**highest hierarchical level, based on a first set of parameters corresponding to a first set of user preferences, further wherein the first selector device is configured to access and search available database sources of material,** (Hoch: page 1, paragraph [0006], "When a request to search for a content in a community is received, a search is performed for the content at one or more nodes of the community.", page 4, paragraph [0046], "list of contents, such as music or movies, may be collected from one or more peers within a community through a **multilevel hierarchical searching** method based on a user's persona information using a learning mechanism.", page 5, paragraph [0058], "when a user **initiates a search, a set of parameters** 301 may be used to specify how the search is being conducted. In one embodiment, these **parameters are set up** at run time when the user **initiates the search**...a search result includes clusters of nodes having contents in genres A to D.", where "first hierarchical level" is read on "initiates a search", "first set of parameters" is read on "a set of parameters" and where "a first subset of identifications of items" is read on "a search result" at initial search), and

**a second selector device operatively coupled to the first selector device, wherein the second selector device is configured to search the first subset of identifications at a lower hierarchical level based on a second set of parameters corresponding to a second set of user preferences** (Hoch: page 4, paragraph [0046], "The contents searched and received from the one or more



peers **may be filtered using multiple levels of details** and a learning algorithm...based on a user's persona information.", where "levels" indicates numbers of filtering processes, where "second set of user preferences" is read on "multiple levels of details", page 5, paragraph [0059], "...This information may be used by the search during a subsequent search...", paragraph [0061], "When a user **selects an area from a search result** displayed, such as area 305, **the search will conducts another search** and retrieves relevant information from the peers related to **the selected area**. When a user selects area 305, the search conducts a search and filters the information collected from the peers based on persona information of the user, as well as the user's past preferences or behaviors collected by the learning mechanism...", where "a second selector device" and "search the first subset of identifications " are read on "the search will conducts another search", and where "a second set of user preferences" is read on "filters the information collected from the peers based on persona information of the user", paragraph [0062], "...when a user selects an area from the display of the level shown in FIG. 3B, the search may display further detailed information from the search result, such as information 310 regarding to specific artists of the songs derived from those genres or sub-genres", Fig. 3A-3D), and to provide therefrom a **second subset of identifications of items within at least one database the source of**

**material, wherein the second subset corresponds to a playlist that is adapted for use by a rendering device for a subsequent rendering of the items identified in the second subset** (Hoch: page 7, paragraph [0075], "If, at block 607, the user is not satisfied with the result, at block 606, the user may select a portion of the search result from the display or view by, for example, circling an area in which the user may be interested. The above processes may be repeated until the user is satisfied with the results." where "second subset of identification of items" is read on "select a portion of the search result").

**However, Hoch does not explicitly disclose device is configured to access and search available database sources of material on a weekly basis to maintain the first subset of identifications of items up to date.**

**Barton discloses device is configured to access and search available database sources of material on a weekly basis to maintain the first subset of identifications of items up to date** (Barton: page 1, paragraph [0013], "...a personal digital assistant or computer could be specially enabled to act as the interactive service itself by storing the database in its memory and performing the database query and processing without externally accessing the service...In this embodiment, transmission to the service provider would only be needed for additional interaction and potentially for **updates of the music database, such as periodically (e.g., weekly).**");

It would have been obvious to one of ordinary skill in the art at the time the invention was made to improve upon "Filtering contents using a learning mechanism" as taught by Hoch by implementing "Method and system for interacting with a user in an experiential environment" as taught by Barton, because it would provide Hoch's generator with the enhanced capability of "...potentially for updates of the music database" (Barton: page 1, paragraph [0013]).

**For claim 2, Hoch and Barton disclose the playlist generator of claim 1, wherein**

**the first set of parameters comprise parameters corresponding to time-independent user preferences** (Hoch: page 4, paragraph [0046]-[0057], "Interests...Artist lists...", where "time-independent" is read on "artist list", page 5, paragraph [0058], "FIG. 3A, when a user initiates a search, a set of parameters 301 may be used to specify how the search is being conducted."), and

**the second set of parameters comprise parameters corresponding to user preferences at a particular time** (Hoch: pages 3-4, paragraph [0040], pages 4-5, paragraph [0046]-[0058], "interest...Favorite songs...Favorite artists...Rating of a user...Mood of a song...Words of the song (e.g., lyrics) The above set of information may be used as parameters, when a user conducts a search, to match people or match a song

profile with a person.", where "user preferences at a particular time" is read on "mood of a song").

**For claim 3, Hoch and Barton disclose the playlist generator of claim 1, wherein**

**the first set of parameters comprise parameters corresponding to event-independent user preferences** (Hoch: page 4, paragraph [0046]-[0057], page 5, paragraph [0058]), and

**the second set of parameters comprise parameters corresponding to user preferences upon an occurrence of an event** (Hoch: pages 3-4, paragraph [0040], pages 4-5, paragraph [0046]-[0058], where "occurrence or an event" is read on "Mood of a song", (i.e. event-specific, when during an love/romantic event, the user would like to play love or romantic songs)).

**Claim 4** is rejected as substantially similar as claim 2, for the similar reasons.

**For claim 5, Hoch and Barton disclose the playlist generator of claim 1, wherein the database source of material includes one or more internet web-sites** (Hoch: page 2, paragraph [0029]-[0030]).

**Claim 11** is rejected as substantially similar as claim 1, for the similar reasons.

**Claim 12** is rejected as substantially similar as claim 2, for the similar reasons.

**Claim 13** is rejected as substantially similar as claim 5, for the similar reasons.

**Claim 17** is rejected as substantially similar as claim 1, for the similar reasons.

**Claim 18** is rejected as substantially similar as claim 2, for the similar reasons.

5. **Claims 6, 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoch (U.S. Pub. No.: US 2003/0191753 A1), in view of Barton et al. (U.S. Pub. No.: U.S. 2002/0072982 A1, hereinafter, Barton) as applied to claims 1, 11 and 17 above, in view of Salam et al. (U.S. Patent No.: U.S. 6,594,654 B1, hereinafter, Salam).**

For claim 6, Hoch and Barton disclose the playlist generator apparatus of claim 1, further including non-volatile memory that is configured to store the first subset of identifications, where the second selector device is further configured to search the first subset of identifications at the lower hierarchical level, based on a third set of parameters corresponding to a third set of user preferences, and to provide therefrom a third subset of identifications of items within the database source of material, wherein the third subset corresponds to another playlist that is adapted to be used by a rendering device for a subsequent rendering of the items identified in the third subset (Hoch: page 5, paragraph [0058]-[0062]).

However, Hoch and Barton do not explicitly disclose store the first subset.

Salam discloses store the first subset (Salam: column 10, lines 52-56, " a first set of raw search results 50a are stored..The first set of search results 50a which includes listings 1-7 are processed to obtain a second set of results 50b.").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to improve upon "Filtering contents using a learning

mechanism" as taught by Hoch by implementing "Systems and methods for continuously accumulating research information via a computer network" as taught by Salam, because it would provide Hoch and Barton's generator with the enhanced capability of "filtering" the information by categorizing the cards as a function of quality or state of currency or completeness, etc., (6) selecting and retaining those items of information that satisfy the researcher's goals" (Salam: column 2, lines 55-59).

**Claim 14** is rejected as substantially similar as claim 6, for the similar reasons.

**Claim 21** is rejected as substantially similar as claim 6, for the similar reasons.

6. **Claims 7-9, 15, 16, 19 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoch (U.S. Pub. No.: US 2003/0191753 A1), in view of Barton et al. (U.S. Pub. No.: U.S. 2002/0072982 A1, hereinafter, Barton) as applied to claims 1, 11 and 17 above, in view of Breese et al. (U.S. Patent No.: U.S. 6,006,218, hereinafter, Breese).

For claim 7, Hoch and Barton disclose the playlist generator apparatus of claim 1, wherein

the first set of parameters includes one or more parameters for searching the database source of material based on a frequency of access of the items within the database source of material (Hoch: page 4, paragraph [0040], "persona information for a user of a device may include a set of

attributes such as, an artist list, a song list, a favorite song list, a favorite artist list, rating of users," paragraph [0041], "persona information associated with a user of a device is automatically collected. For example, a list of interests of a user of the device 5 may be automatically generated by recording the web sites the user visits, the music the user listens to, the films the user watches, etc.", page 5, paragraph [0058], "these parameters are set up at run time when the user initiates the search. Alternatively, these parameters may be collected automatically based on **user's current or previous behaviors.**" ), and

**the first selector device is further configured to determine a measure of requests for each item within the database source of material by a plurality of users, and to provide therefrom the first subset of identifications of items, based on the measure of requests for each item (Hoch: page 2, paragraph [0027], page 7, paragraph [0080], where "measure of request for each item" is read on "popular").**

**However, Hoch and Barton do not explicitly disclose based on a frequency of access of the items, and**

**measure of requests for each item within the source material by a plurality of users.**

**Breese discloses based on a frequency of access of the items (Breese: column 8, lines 16-24, "In step 222 input relating to, e.g., the search**

to be performed, user attributes, user preferences and/or the user's existing knowledge about items included in the information database to be searched, is obtained...may provide information on which sites a user likes based on a user's frequent access of certain sites..." ), and

**measure of requests for each item within the source material by a plurality of users** (Breese: column 2, lines 53-55, "In order to generate the knowledge probability estimates, factors which may be considered include: the popularity of the individual data items being searched..." Column 2, line 65-column3, line 7, "Collaborative filters generate, using historical information on a large number of individuals preferences and information on the attributes and preferences of a particular user, a list of recommendations sorted by their estimated value to the user. The historical information relating to an item's popularity used to perform a collaborative filtering operation may also be used to generate knowledge probability estimates in accordance with the present invention. For this reason, collaborative filters are particularly well suited for use with the present invention.", where "measure of requests" is read on "popularity").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to improve upon "Filtering contents using a learning



mechanism" as taught by Hoch by implementing "Methods and apparatus for retrieving and/or processing retrieved information as a function of a user's estimated knowledge" as taught by Breese, because it would provide Hoch and Barton's generator with the enhanced capability of "an improved method of making recommendations or suggestions to the user regarding other Internet sites or data items which might be unknown but interesting to the user." (Breese: column 3, lines 8-31).

**Claim 8** is rejected as substantially similar as claim 4, for the similar reasons.

**Claim 9** is rejected as substantially similar as claim 3, for the similar reasons.

**Claim 15** is rejected as substantially similar as claim 7, for the similar reasons.

**Claim 16** is rejected as substantially similar as claim 8, for the similar reasons.

**Claim 19** is rejected as substantially similar as claim 7, for the similar reasons.

**Claim 20** is rejected as substantially similar as claim 2, for the similar reasons.

7. **Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoch (U.S. Pub. No.: US 2003/0191753 A1), in view of Barton et al. (U.S. Pub. No.: U.S. 2002/0072982 A1, hereinafter, Barton), and further in view of Breese et al. (U.S. Patent No.: U.S. 6,006,218, hereinafter, Breese) as applied to claim 7 above, and further in view of Salam et al. (U.S. Patent No.: U.S. 6,594,654 B1, hereinafter, Salam).**

**Claim 10** is rejected as substantially similar as claim 6, for the similar reasons.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YU ZHAO whose telephone number is (571)270-3427. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tony Mahmoudi can be reached on (571) 272-4078. The fax phone number for the organization where this application or proceeding is assigned is 571-270-4427.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Date: 9/30/2009

/Yu Zhao/

Examiner, Art Unit 2169

/Yicun Wu/

Primary Examiner, Art Unit 2158